UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA

Plaintiff,

CASE NO. 16-30350

v.

RANDY MONTANTE

MAG. JUDGE ANTHONY P. PATTI

Defendant.
__________________________________/

ORDER OF DETENTION PENDING TRIAL

After conducting a detention hearing under the Bail Reform Act, 18 U.S.C. § 3142(f), I conclude that these facts require that Defendant be detained pending trial.

Part I – Findings of Fact

A. Eligibility. This case is eligible for a Detention Hearing (18 U.S.C. § 3142(f)), for the reasons checked below in this Part I A:

☒(1) Under 18 U.S.C. § 3142(f)(1), upon the government's motion in a case that involves

☒(a) a crime of violence, a violation of section 1591, or an offense listed in 2332b(g)(5)(B) for which a maximum term of imprisonment of 10 years or more is prescribed; **or**

☐(b) an offense for which the maximum sentence is life imprisonment or death;

or

☐(c) an offense for which a maximum term of imprisonment of ten years or more is prescribed in the Controlled Substances Act (21 U.S.C. §§ 801-

904), the Controlled Substances Import and Export Act (21 U.S.C. §§ 951-971), or Chapter 705 of Title 46; **or**

☐(d) any felony if such person has been convicted of two or more offenses described in subparagraphs (a) through (c) of this paragraph, or two or more State or local offenses that would have been offenses described in subparagraphs (a) through (c) of this paragraph if a circumstance giving rise to Federal jurisdiction had existed, or a combination of such offenses; **or**

☐(e) any felony that is not otherwise a crime of violence but involves:

☐(i) a minor victim, **or**

☐(ii) the possession or use of a firearm or destructive device (as defined in section 921), **or**

☐(iii) any other dangerous weapon, **or**

☐(iv) involves a failure to register under 18 U.S.C. § 2250.

☐(2) Under 18 U.S.C. 3142(f)(2), upon the government's motion or the court's own motion in a case that involves

☐(a) a serious risk that such person will flee; **or**

☐(b) a serious risk that such person will obstruct or attempt to obstruct justice, or threaten, injure, or intimidate, or attempt to threaten, injure, or intimidate, a prospective witness or juror.

B. Rebuttable Presumption. A rebuttable presumption for detention exists in this case if reasons are checked below in this Part I B.

(1) Defendant on Release Pending Trial (18 U.S.C. § 3142 (e)(2)): A rebuttable presumption that no condition or combination of conditions will reasonably assure the safety of another person or the community arises when

☐(a) Defendant is charged with an offense described in 18 U.S.C. § 3142(f)(1), and has previously been convicted of a crime listed in 18 U.S.C. § 3142(f)(1), or comparable state or local offense; **and**

☐(b) The offense was committed while Defendant was on release pending trial for a federal, state, or local offense; **and**

☐(c) A period of less than five years has elapsed since

☐(i) the date of conviction, **or**

☐(ii) Defendant's release from prison.

(2) **Probable Cause Findings (18 U.S.C. § 3142(e)(3)):** A rebuttable presumption that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of the community arises when there is probable cause to believe that Defendant has committed an offense

☐(a) for which a maximum prison term of ten years or more is prescribed in the Controlled Substances Act (21 U.S.C. §§ 801-904), the Controlled Substances Import and Export Act (21 U.S.C. §§ 951-971), or Chapter 705 of Title 46; **or**

☐(b) under 18 U.S.C. § 924(c) (use of a deadly or dangerous weapon or device in relation to a crime of violence or drug trafficking crime), 18 U.S.C. § 956(a) (conspiracy to kill, kidnap, maim, or injure persons or damage property in a foreign country), or 18 U.S.C. § 2332b (acts of terrorism transcending national boundaries); **or**

☐(c) listed in 18 U.S.C. § 2332b(g)(5)(B) (federal crimes of terrorism) for which the prison term is 10 or more years; **or**

☐(d) under Chapter 77 of Title 18, United States Code, for which a maximum term of imprisonment of 20 years or more is prescribed (i.e., 18 U.S.C. §§ 1581, 1583, 1584, 1589, and 1594)(slavery); **or**

☒(e) involving a minor victim as listed in 18 U.S.C. § 3142(e)(3)(E).

Part II – Statement of the Reasons for Detention

I find that the testimony and information submitted at the detention hearing establishes

☐ by clear and convincing evidence that, for the reasons set forth below, there is no condition or combination of conditions which will reasonably assure the safety of the community; **or**

☐ by a preponderance of the evidence that, for the reasons set forth below, there is no condition or combination of conditions which will reasonably assure Defendant's appearance; **or**

☒ both of the above.

Statement of reasons for detention pursuant to 42 U.S.C. § 3142(i):

The Court's findings and reasons for ordering detention, including its consideration of the factors listed in 42 U.S.C. § 3142(g), were stated on the record at the August 12, 2016 hearing and are fully incorporated by this reference. At that time, the defendant did not contest that there is probable cause to believe that the he committed the crimes of receipt of child pornography, production of child pornography and online enticement of a minor, in violation of 18 U.S.C. §§ 2251(a), 2252A(a)(2), and 2422(b) respectively (and the Court so found), and accordingly there is a presumption in favor of detention in this case. Defendant has not overcome that presumption. For the sake of argument, even if the defendant *had* overcome the presumption in favor of detention, the Court alternatively finds: (a) by a preponderance of the evidence that there is no condition or combination of conditions which will reasonably assure Defendant's appearance; and (b) by clear and convincing evidence that there is no condition or combination of conditions which will reasonably assure the safety of the community. This evidence was discussed on the record in support of the Court's reasoning, and includes, but is not limited to evidence that: (1) the defendant is an experienced international traveler with strong ties to a foreign country; (2) despite being informed that the minor victim was only 13 years old, being twice warned and confronted by her mother and being told that the police were being informed of his activities, the defendant continued to communicate with the minor victim (and with an undercover officer he believed to be the minor victim), encouraging her to engage in sexually explicit and pornographic activity and to electronically record these activities for his own gratification; (3) after learning that he had been detected, the defendant continued his online relationship with the minor victim while repeatedly encouraging her to delete their communications and the applications used to foster them and to lie about his knowledge of her age and their ongoing relationship; (4) while fully aware of the minor victim's age, the fact that he had been detected, and knowing that the police were being contacted, the defendant encouraged the minor victim to use alternate and more secure means of communicating with him, including use of code/pass words and alternate accounts; (5) once aware of the minor victim's true age, he continued his illegal activities, despite acknowledging its illegality and the possibility that he might go to prison for it, and instead informing her that, "Age doesn't matter" if "it's real" and "you like someone;" (6) when confronted by the minor victim's mother, instead of showing any remorse or intention to alter his behavior, the defendant brazenly corrected the mother's grammar and tried to rationalize or justify his relationship with her 13 year old daughter; (7) the location at which the defendant proposes to live if released is in very close proximity to a grade school, within a few blocks of a high school and has two parks nearby; (8) the defendant has incentive to flee from prosecution, based up the potential sentence he faces if convicted. It is further noted that Pretrial Services recommends detention. The Court is of the opinion, based upon the above evidence and for the reasons placed on the record, that the defendant: (1) is obsessed with the minor victim; (2) will not cease contact with her even if ordered to do so; (3) may seek to encounter her in person; (4) has emotionally manipulated her to the point where she will imprudently follow his directives against her own best interests; (5) poses a danger to her and to other children; (6) will likely seek to deceive the Court about his compliance with any release conditions that may be imposed; and, (7) is unlikely to follow the Court's directives.

Part III – Directions Regarding Detention

Defendant is committed to the custody of the Attorney General or a designated representative for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or held in custody pending appeal. Defendant must be afforded a reasonable opportunity to consult privately with defense counsel. On order of a United States Court or on request of an attorney for the Government, the person in charge of the corrections facility must deliver Defendant to the United States Marshal for a court appearance.

Review of this Order is governed by 18 U.S.C. § 3145 and E.D. Mich. L.R. 57.2.

Date: August 12, 2016

s/Anthony P. Patti
Anthony P. Patti
United States Magistrate Judge